IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 31 OF 2005

Vimal Vitthal Chavan,]
Residing at R.B. Mane Chawl No. 5/C,]
Room No. 3, Devipada, Borivali (East),]
Mumbai 400 066] ...
Petitioner

Versus

1. Nava Maharashtra Education Society,]
a Trust]
]
2. K.G.T. High School]
]
Nos. 1 & 2 having address at Pandurang]
Budhkar Marg, Bombay 400 013]

3. State of Maharashtra]

(Through the Deputy Director of]
Education, Jawahar Bal Bhavan,]
Charni Road, Bombay 400004)] ...
Respondents

Mr. Santosh Shetty for the Petitioner

Mrs. Anjali Helekar for Respondents No. 1 and 2

Mr. L.T. Satelkar, Assistant Government Pleader, for Respondent No. 3.

CORAM: DALVEER BHANDARI, C.J., &
S. J. VAZIFDAR, J.
DATE : AUGUST 8, 2005.

ORAL JUDGMENT (Per Dalveer Bhandari, C.J.):-

1. The petitioner's husband, Vitthal Ramkrishna Chavan, while working as a Head Clerk with the K.G.T. High School, respondent No.2, died in 1998 due to drowning at the native place. According to the petitioner, she is getting family pension of Rs. 3,000/- from respondent No.3. It is also incorporated in the petition that the petitioner has two sons. Her elder son has been recently employed in a private factory drawing a salary of Rs.2,000/- and the younger son, of 18 years of age, is unemployed.

2. The petitioner applied for employment on compassionate ground. In response to the petitioner's request, respondent No.2 offered employment to the petitioner on compassionate ground in Class IV (Peon) and the petitioner signed the acceptance letter and accepted employment of Class IV employee offered to

her. It may be appropriate to mention that in the appointment letter, which was sent to her on 6th February, 1999, she mentioned that she is accepting the post offered to her in Class IV without prejudice to her right on the post of Class III. It may also be pertinent to mention that despite number of reminders from respondent No. 2, the petitioner did not join service.

3. The relevant portion of the reminder letter reads as under:

> "You were informed that the school has appointed you on the compassionate ground as Class IV employee. After that you were also sent two reminders by RPAD but since you have not taken any action in this respect, it seems that you are not in need of a job, therefore as a last chance, you are being informed to join the duties. Therefore, in case you do not report and join the duties within a period of seven days from the receipt of this letter, the school will not be bound to offer you employment, which please note."

Even despite this reminder from the Principal, the petitioner did not join the service.

4. In this petition, the petitioner has deliberately suppressed the material facts and incorporated totally incorrect and false facts that she joined as a Junior Clerk with respondent No. 2 with effect from 6th January, 2004. In fact, the petitioner never joined as a Junior Clerk with respondent No. 2.

5. In support of her contention, the petitioner has relied on Exhibit 'B', Appointment Order dated 6th February, 1999. Translation of this appointment order is at page 37 of the petition, which clearly mentioned that she was appointed on compassionate ground on the vacant post of Class IV employee (Peon) in the school from 8th February, 1999 in the pay scale of Rs.750-940 at the monthly salary of Rs.750/-. It was also mentioned that she would also be entitled to LTA, HRA and DA as granted by the Government from time to time.

Unfortunately, the petitioner has twisted the facts and in paragraph 5 of the petition, she deliberately tried to mislead the Court that in fact, she was appointed as a Junior Clerk in the second respondent-school with effect from 6th January, 2004; and in support of that contention, she has annexed Exhibit 'B', whereas this letter clearly indicates that she was employed on compassionate ground on a vacant post of Class IV employee. Relevant portion of this Appointment Order dated 6th February, 1999, Exhibit 'B' to the reply-affidavit, reads as under:

> "With reference to your application dated 10.07.1998 and your letter of acceptance dated 06.02.1999 for the post of Class IV employee (Peon), you are hereby informed that pursuant to the Government Resolution, General Administration Department No. Compassionate / 1084/189/CR/155/ 13A dated 08.03.1985, as your late husband expired while in service, you are appointed on compassionate ground on the vacant post of Class IV employee (Peon) in the School from 08.02.1999 in the scale of Rs.750-940 at the monthly salary of Rs.750/-. You will be

entitled for LTA, HRA & DA as granted by the Government from time to time."

A letter was sent by the petitioner on 6th February, 1999 to the Secretary and Principal of "the Maharashtra Education Society, Kamaladevi Govindram Tahilyani High School", and the same is reproduced as under:-

"1. Hon. Secretary,
Maharashtra Education Society,
Kamaladevi Govindram
Tahilyani High School
Bombay 400 013

2. Hon. Principal.

In acknowledgment of your letter, I am accepting the post offered by you without prejudice to my right on the post of Clerk.

Yours faithfully,

Sd/-

Vimal C. Chavan.
Date: 6.2.1999."

6. The learned counsel appearing for the respondents asserted that the petitioner has deliberately suppressed the entire correspondence between the parties from the Court. The learned Counsel appearing for the Management also submitted

that still the School is prepared to accommodate her as a Class IV employee on compassionate ground.

7. A comprehensive reply has been filed by Chandrakant S. Chavan, Secretary of respondent No.1, Nava Maharashtra Education Society, the Trust. It is also mentioned in the reply that one Vijay Kashinath Gadekar was appointed as a Class IV employee on 2nd February, 1998. One Vitthal Chavan, who was a Senior Clerk, expired on 27th May, 1998, a post fell vacant and Vijay Gadekar was qualified to be appointed as a clerk since there was no other Class IV employee who was qualified for the post of clerk. It is also mentioned that Vijay Gadekar was very efficient and therefore, he was promoted on 18th August, 1998. The petitioner had applied on compassionate ground by her application dated 10th July, 1998 but at that time, she had no work experience. Considering the job responsibilities of the clerk, which are to be handled by an efficient and experienced person, and considering that the petitioner was not suitable to be appointed in the post

of Clerk, she was not appointed as clerk but respondent No.1- Society decided to appoint her in Class IV, as indicated above. In the affidavit, it is mentioned that the petitioner accepted the appointment in Class IV and despite five reminders of the school, she did not join. In the affidavit, it is also mentioned that after Vijay Gadekar was promoted to the post of clerk, there was no vacancy in Class III in the school where the petitioner could be accommodated.

8. The learned counsel for the respondents submitted that this petition deserves to be dismissed with exemplary costs because the petitioner has deliberately suppressed the material facts from the Court and has not approached the Court with clean hands. It is submitted that the petitioner has deliberately suppressed and concealed following vital facts and introduced false facts to mislead the Court:-

(1) That respondent No. 2 offered the petitioner employment on compassionate ground on the post of Class IV, which she accepted without prejudice to her right to be appointed in Class III.

(2) That reminders have been sent to the petitioner by respondent No. 2, asking her to join duty as a Class IV employee of the school.

(3) That Vijay Gadekar was promoted to the post of Clerk and there was no vacancy in Class III position in respondent No. 2-school.

9. In *Concise Oxford Dictionary*, 'fraud' has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to *Halsbury's Laws of England*, a representation is deemed to have been false, and therefore, a misrepresentation, if it was at the material date false in substance and in fact.

10. In *Webster's Third New International Dictionary*, 'fraud' in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another.

11. *'Fraud',* according to *Black's Law Dictionary, Sixth Edition*, is an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. Anything calculated to deceive, whether by a single act or combination, or by suppression of truth, or suggestion of what is false, whether it be by direct falsehood or innuendo, by speech or silence, word of

mouth, or look or gesture. Bad faith and fraud are synonymous, and also synonyms of dishonesty, infidelity, faithlessness, perfidy, unfairness, etc.

12. 'Fraud' has also been defined under Section 17 of the Indian Contract Act, 1872, which reads as under:-

> 'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:-
>
> (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
>
> (2) the active concealment of a fact by one having knowledge or belief of the fact;
>
> (3) a promise made without any intention of performing it;
>
> (4) any other act fitted to deceive;

(5)any such act or omission as the law specially declares to be fraudulent."

13. "Fraudulent concealment" is defined as the hiding or suppression of a material fact or circumstance which the party is legally or morally bound to disclose. The test whether failure to disclose material facts constitutes fraud is the existence of a duty, legal or equitable, arising from the relation of the parties; failure to disclose a material fact with intent to mislead or defraud under such circumstances being equivalent to an actual "fraudulent concealment". Fraudulent concealment justifying a rescission of a contract is the intentional concealment of some fact known to the party charged, which is material for the party injured to know to prevent being defrauded; the concealment of a fact which one is bound to disclose being the equivalent of an indirect representation that such fact does not exist.

14. "Fraudulent misrepresentation" is defined to mean a false statement as to material fact, made with intent that another rely thereon, which is believed by other party and on which he relies and by which he is induced to act and does act to his injury, and statement is fraudulent if speaker knows statement to be false or if it is made with utter disregard of its truth or falsity.

15. According to *the Law Lexicon, Second Edition (2001)*, the Latin Maxim "*Suppressio veri, suggestio falsi*" defines that the suppression of the truth is equivalent to the suggestion of falsehood. The suppression or failure to disclose what one party is bound to disclose to another, may amount to fraud.

16. The maxim that one who comes to Court must come with "clean hands" is based on conscience and good faith. The maxim is confined to misconduct in regard to, or at all events connected with, the matter in

litigation. “Clean hands” means a clean record with respect to the transaction with the defendant, and not with respect to any third person.

17. “Clean hands doctrine” means that equity will not grant relief to a party, who, as actor, seeks to set judicial machinery in motion and obtain some remedy, if such party in prior conduct has violated conscience or good faith or other equitable principle. One seeking equitable relief cannot take advantage of one's own wrong.

18. The learned counsel for the respondents submitted that according to the settled legal position, which has been crystallised by a series of judgments of various Courts, one, who is guilty of deliberately suppressing the material facts from the Court, is not entitled to any relief. In support of their contention, reliance has been placed on number of judgments delivered by various Courts.

19. In *S.P. Chengalvaraya Naidu (Dead) by LRs v. Jagannath (Dead) by LRs & Ors.* [(1994) 1 SCC 1], the Court observed that

> "...The Courts of law are meant for imparting justice between the parties. One, who comes to the Court, must come with clean hands. We are constrained to say that more often than not, process of the Court is being abused. Property-grabbers, tax-evaders, bank-loan dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of litigation... A fraud is an act of deliberate deception with the design of securing something by taking
>
> advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage... A litigant, who approaches the Court, is bound to produce all the documents executed by him,

> which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite party."

20. In a well-known case, *Chittaranjan Das v. Durgapore Project Limited & Ors. (99 CWN 897)*, the Court observed that "Suppression of a material document which affects the condition of service of the petitioner, would amount to fraud in such matters. Even the principles of natural justice are not required to be complied with in such a situation. It is now well known that a fraud vitiates all solemn acts."

21. Reliance was also placed on a Division Bench judgment of Delhi High Court in *Jeevan Kumar & Anr. v. Union of India* [2002 VII AD (Delhi) 100], wherein the Court held that those who seek equity must approach the Court with clean hands.

22. In *Rajabhai Abdul Rehman Munshi v. Vasudev Dhanjibhai Modi* reported as 1964 (3) SCR 480, Their Lordships of the Supreme Court observed that a party who approaches the Court knowing or having reason to believe that if the true facts were brought to its notice, the Court would not grant special leave, and persuades the Court to grant leave to appeal is guilty of conduct, forfeiting all claims to the exercise of discretion in his favour. It is his duty to state facts which may reasonably have a bearing on the exercise of the discretionary powers of this Court. Any attempt to withhold material information would result in revocation of the order obtained from the Court.

23. In *Har Narain v. Badri Das* reported as AIR 1963 SC 1558, Their Lordships of the Supreme Court observed that it is of utmost importance that in making material statements and setting forth grounds in applications for special leave, care must be taken not to make any statements which are inaccurate, untrue or misleading.

The special leave granted by the Supreme Court in this case was revoked and the appeal was, without dealing with the merits of the case, dismissed with costs.

24. In *Asiatic Engineering Co. v. Achhru Ram*, AIR 1951 Allahabad 746 (Full Bench), the Court observed that no relief can be granted in a writ petition which is based on misstatement or suppression of material facts. The Court observed in paragraph 51, page 767 –

> "In our opinion, the salutary principle laid down in the cases .. should appropriately be applied by Courts in our country when parties seek the aid of the extraordinary powers granted to the Court under Art. 226 of the Constitution. A person obtaining an *ex parte* order or a *rule nisi* by means of a petition for exercise of the extraordinary powers under Art. 226 of the Constitution must come with clean hands, must not suppress any relevant facts from the Court, must refrain from making misleading statements and from giving incorrect information to the Court. Courts, for their own protection, should insist that persons invoking

> these extraordinary powers should not attempt, in any manner, to misuse this valuable right by obtaining *ex parte* orders by suppression, misrepresentation or misstatement of facts."

25. In *Udai Chand v . Shankar Lal & Ors.* (1978) 2 SCC 209, the Court revoked the special leave petition and vacated the stay order. The Court, while following the ratio of the aforementioned cases, observed that the Supreme Court would be justified in revoking the leave to appeal if the same was obtained by making misstatement of a material fact. Special leave already granted was revoked and consequently, appeal was dismissed with costs. This principle has been consistently followed in a number of other cases by various Courts.

26. Reliance was placed on *New India Steel Industries v. V.D. Steel Industries & Anr.* reported as (1981) 2 SCC 16. The Court observed:

> "After hearing counsel for the parties we allow CMP 6495 of 1980 for the revocation of special leave petition granted as per this Court's order dated December 12, 1979. There are two facts which stand out. Firstly, the appellant had made a misstatement of material fact that the proclamation of sale did not contain any note that the property was being sold subject to the mortgage charge of Rs.1,65,000/-. In fact, such a note does exist. Secondly, he misconducted himself inasmuch as he published a public notice captioned as 'Court Notice' on April 12, 1980, as if that notice was being published under the orders of this Court. For these two reasons we revoke the special leave petition granted earlier and dismiss the appeal arising out of that SLP. The stay already granted automatically stands vacated."

27. On the overall conduct of the parties, reliance was also placed on the Supreme Court judgment in *Ram Chandra Singh v. Savitri Devi* [2003 (8) Scale 505]. In this case, a very important principle of law has been crystallised when the Apex Court observed that fraud,

as is well known, vitiates every solemn act. Fraud and justice never dwell together.

28. The Delhi High Court in *Dr. Manmonhan Singh Dhaliwal v. Gurbax Singh Arora & Ors.* reported as 94 (2001) DLT 820 observed that the main function of the Court is to administer justice. Judgment or order procured by playing fraud upon the Court cannot be rammed down the throat of the aggrieved party. Justice and fraud are aliens to each other. Fraud pollutes the sanctity and solemnity of the judicial proceedings. This is why the Courts have inherent powers to recall or set aside such a judgment or order.

29. In *Indian Bank v. Satyam Fibres (India) Pvt. Ltd.* JT 1996 (7) SC 135, the Apex Court observed that "since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court, it also amounts to an abuse of the process of the Court, that the Courts have inherent power to set aside an order obtained by

practising fraud upon the Court, and that where the Court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order." The Court further observed that "The judiciary in India also possesses inherent power, specially under Section 151 CPC, to recall its judgment or order if it is obtained by fraud on Court. In the case of fraud on a party to the suit or proceedings, the Court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud. Inherent powers are powers, which are resident in all Courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the constitution of the tribunals or Courts themselves so as to enable them to maintain their dignity, secure obedience to their process and rules, protect their officers from indignity and wrong and to punish unseemly behaviour. These powers are necessary for the orderly administration of the Courts' business."

30. In *Shrisht Dhawan v. M/s. Shaw Brothers*, (1992) 1 SCC 534, while dealing with a landlord-tenant matter, the Court observed as under:-

> "Neither of them (the landlord and the tenant) can take advantage of his own deceit or breach. No sanction of the statutory authority procured by fraud can protect the guilty or harm the innocent."

31. In the case of *Gowrishankar v. Joshi Amba Shankar Family Trust*, JT 1996 (2) SC 560, the Court observed that suppression of a material document would also amount to a fraud on the Court.

32. In *Nachhittar Singh* vs. *The State of Punjab* (AIR 1975 SC 118), the Apex Court came to the conclusion that it is wrong to think that judgments *in rem* are inviolable. Fraud, in any case bearing the jurisdictional facts, vitiates all judicial acts, whether *in rem* or *in personam.*

33. In a recent case, *Bhaurao Dagdu Paralkar v. State of Maharashtra & Ors.,* JT 2005 (7) SC 530, while dealing with the principle of fraud, the Apex Court has laid down in paragraph 12:-

> "'Fraud' as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe an act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury enures therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction *void ab initio*. Fraud and deception are synonymous. Although in

> a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res judicata*."

The Court further observed:-

> "'Fraud' and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct."

34. A Division Bench of the Madras High Court has, in *Venkatappa V. Subba*, 29 Mad. 179, taken a similar view and ruled that a suit lies to set aside a judgment on the ground that the defendant had obtained it by fraud in that he had committed deliberate perjury and suppressed evidence. The learned Judges (Badham and Moore, JJ.) there declared that the law in England has been authoritatively and finally laid down in *Aboneoff v. Oppenheimer, L.R. 10 Q.B.D. 295,* and *Vadala* v.

Lawes, L.R. 25 Q.B.D. 310, and that it is the same in India.

35. In the case of *Khawaja v. Secretary of State for Home Dept.*, (1983) 1 All ER 765, the Court observed that it is dangerous to introduce maxims of common law as to effect to fraud while determining fraud in relation to statutory law. 'Fraud' in relation to statute must be a colourable transaction to evade the provisions of a statute.

36. It is competent for every Court, whether superior or inferior, to treat as nullity any judgment which can be clearly shown to have been obtained by manifest fraud (*Maung Kyaw* v. *Animul,* 62 Ind. Cas. 53 : 13 Bur. L.T. 198).

The above two cases were considered with approval by the Supreme Court in number of judgments.

37. We would like to examine the legal position on question of suppression, concealment, misleading of other leading judicial systems.

38. Similar principles have been enunciated in English cases. In *Rex v. Williams* (1914) 1 KB 608, the Court observed –

> "In my view the writ is discretionary. A party may by his conduct preclude himself from claiming the writ *ex debito justitiae*, no matter whether the proceedings which he seeks to quash are void or voidable. If they are void it is true that no conduct of his will validate them; but such considerations do not affect the principles on which the Court acts in granting or refusing the writ of certiorari. This special remedy will not be granted *ex debito justitiae* to a person who fails to state in his evidence on moving for the *rule nisi* that at the time of the proceedings impugned he was unaware of the facts on which he relies to impugn them."

39. In *Rex v. Kensington Income Tax Commissioners* (1917) 1 KB 486, the Court opined as under:-

> "If on the argument showing cause against a *rule nisi* the Court comes to the conclusion that the rule was granted upon an affidavit which was not candid and did not fairly state the facts, but stated them in such a way as to mislead and deceive the Court, there is power inherent in the Court, in order to protect itself and prevent an abuse of its process, to discharge the *rule nisi* and refuse to proceed further with the examination of the merits."

40. In *Derry and Ors. v. Peek*, (1886-90) All ER 1, the English Court described what constitutes 'fraud' thus: " 'Fraud' is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false."

41. In *Lazarus Estate Ltd. v. Beasley*, (1956) 1 QB 702, Lord Denning observed, "No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything." In the same judgment Lord Parker LJ observed that fraud

vitiates all transactions known to the law of however high a degree of solemnity.

42. The Court has an inherent power to see that its process is not abused: *Metropolitan Bank v. Pooley*, per Lord Blackburn, (1885) 10 App. Cas. 210, 220. A similar statement in a similar class of case is made by Farwell L.J. In the case of *The Hagen,* (1908) P. 189, 201: ...full and fair disclosure is necessary, and a failure to make such full and fair disclosure would justify the Court in discharging the order, even although the party might afterwards be in a position to make another application."

43. Blackburn J. in *Reg. v. Justices of Surrey*, (1870) 5 Q.B. 466, at p. 473, observed that "where the party grieved has by his conduct precluded himself from taking an objection, the Court will not permit him to make it as in *Reg. v. South Holland Drainage Committee,* 8 Ad. & E. 429."

44. Lord Cozens-Hardy M.R referred to *Drummond v. Collins*, (1915) A.C. 1011. It is submitted that the Divisional Court was wrong in discharging the rule without going into the merits. On an *ex parte* application for an order, the applicant is bound to state all the material facts. He has to form an opinion as to what facts are material and is responsible for his statement of them. He will not, however, be deprived of his rights if he comes to a wrong conclusion as to what facts are material.

According to Warrington L.J., "the Court will not allow a plaintiff to obtain any advantage from an *ex parte* injunction which he has improperly obtained."

45. "The writ is discretionary, and the applicant may forfeit his right to the writ if he has been guilty of misconduct: *Farquharson v. Morgan*, per Lopes L.J., (1894) 1 Q.B. 552, 559.

The affidavit on which the *rule nisi* in the present case was obtained was so drawn as to mislead the Court,

and, apart from the question whether if the true facts had been stated, the Court would have granted a *rule nisi*, the rule having been obtained by means of a misleading affidavit ought to be discharged to prevent an abuse of the process. *[Bullivant v. Attorney-General for Victoria*, (1901) A.C. 196, was also cited.*]*"

46. In *Dolglish v. Jarvile,* 2 Mac. & G. 231, 238, which was decided by Lord Langdale and Rolfe B., it was observed that "it is the duty of a party asking for an injunction to bring under the notice of the Court all facts material to the determination of his right to that injunction; and it is no excuse for him to say that he was not aware of the importance of any facts which he has omitted to bring forward. .. It is quite clear that every fact must be stated, or, even if there is evidence enough to sustain the injunction, it will be dissolved. That is to say, he would not decide upon the merits, but said that if an applicant does not act with *uberrima fides* and put every material fact before the Court it will not grant

him an injunction, even though there might be facts upon which the injunction might be granted, but that he must come again on a fresh application.

47. If a party conceals anything that he knows to be material, it is a fraud; but besides that if he conceals anything that may influence the rate of premium which the underwriter may require, although he does not know that it would have that effect, such concealment entirely vitiates the policy. So here, if the party applying for a special injunction abstains from stating facts which the Court thinks are most material to enable it to form its judgment, he disentitles himself to that relief which he asks the Court to grant. .. That is merely one and perhaps rather a weighty authority in favour of the general proposition which I think has been established, that on an *ex parte* application, *uberrima fides* is required, and unless that can be established, if there is anything like deception practised on the Court, the Court ought not to go into

the merits of the case, but simply say “We will not listen to your application because of what you have done. .. If you make a statement which is false or conceal something which is relevant from the Court, the Court will discharge the order and say “You can come again if you like, but we will discharge this order, and we will apply the general rule of the Court to applications like this. ... the prerogative writ is not a matter of course. The applicant must come in the manner prescribed and must be perfectly frank and open with the Court. ...the application must be refused, not on the grounds of the merits of the case, but on the ground that the *rule nisi* was obtained by concealment of facts which ought not to have been concealed and by statements which were not in accordance with the facts.”

48. Scrutton L.J. In the said case further observed that when an applicant comes to the Court to obtain relief on an *ex parte* statement, he should make a full and fair

disclosure of all the material facts – facts, not law. He must not misstate the law if he can help it – the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the Court will set aside any action which it has taken on the faith of the imperfect statement. .. A plaintiff applying *ex parte* comes (as it has been expressed) under a contract with the Court that he will state the whole case fully and fairly to the Court. If he fails to do that, and the Court finds, when the other party applies to dissolve the injunction, that any material fact has been suppressed or not properly brought forward, the plaintiff is told that the Court will not decide on the merits, and that, as he has broken faith with the Court, the injunction must go. The same thing is said in *Dalglish v. Jarvie* (supra).

49. "A similar point arises in applications made *ex parte* to serve writs out of the jurisdiction, and I find in the case of *Republic of Peru v. Dreyfus Brothers & Co., 55 L.T. 802, 803,* Kay J. stating the law in this way: I have always maintained, and I think it most important to maintain most strictly, the rule that, in ex parte applications to this Court, the utmost good faith must be observed. I have never hesitated, and never shall hesitate until the rule is altered, to discharge the order at once, so as to impress upon all persons who are suitors in this court the importance of dealing in good faith with the Court when *ex parte* applications are made."

50. In *Rex vs. The Compensation Authority for the County of West Suffolk*, (1919) 2 K.B. 374 at 382, it is held that in any case, the applicants are not entitled to a writ of certiorari to quash the order of the compensation authority which refused the renewal of the licence on the ground that the licensed house was in fact no

longer required. The conduct of the appellants has been such as to disentitle them to the writ.

51. In *Reg. v. Justices of Survey,* (1870) 5 Q.B. 466, at p. 473, Blackburn, J. observed that where the party grieved has by his conduct precluded himself from taking an objection, the Court will not permit him to make it. The party who neglects to communicate which he knows and ought to communicate is concealment. Each party shall communicate to the other, in good faith, all facts within his knowledge which are or which he believes to be material to the contract and as to which he makes no warranty, and which the other has not the means of ascertaining. If a representation is false and when the facts fail to correspond with its assertions or stipulations.

52. According to Lord Coke, fraud and justice never dwell together. It vitiates the most solemn proceedings of Courts of Justice, says Lord De Grey, C.J. in *The Duchess*

of Kingston' *scase*, 20 How. St. Tr. 355. It avoids all judicial acts, ecclesiastical or temporal.

53. The maxim “he who comes into equity must come with clean hands” which has been invoked mostly in cases between private litigants, requires a plaintiff seeking equitable relief to show that his past record in the transaction is clean (*Overton v. Banister, (1844), 3 Hare 503, 67 E.R. 479; Nail v. Punter* (1832), 5 Sim, 555, 58 E.R. 447: *Re. Lush*' *sTrust* (1869), L.R. 4 Ch. App.591. These cases present instances of the Court's refusal to grant relief to the Plaintiff because of his wrongful conduct in the very matter which was the subject of the suit in equity. The maxim must not be interpreted and applied too broadly as, e.g. against a plaintiff who had not led a blameless life. In *Dering v. Earl of Winchelsea* (1787), 1 Cox 318, 29 E.R. 1184), Lord Chief Baron Eyre stated at pp 319-20.

54. In *Wood,* 108 U.S. 218, the U.S. Supreme Court observed:-

> "It is well settled that if a person wishes his trade-mark property to be protected by a court of equity, he must come to court with clean hands, and if it appears that the trade-mark for which he seeks protection is itself a misrepresentation to the public, and has acquired a value with the public by fraudulent misrepresentations in advertisements, all relief will be denied to him."

The same principle has been reiterated in this case:-

> " The maxim "he who comes to Court must come with clean hands" which has been invoked mostly in cases between private litigants, requires a plaintiff seeking equitable relief to show that his past record in the transaction is clean: *Overton v. Banister* (1844) 3 Hare 503, 67 E.R. 479; *Nail v. Punter* (1832), 5 Sim. 555, 58 E.R. 447; *Re Lush's Trust* (1869) L.R. 4 Ch. App. 591. These cases present instances of the Court's refusal to grant relief to the plaintiff because of his wrongful conduct in the very matter which was the subject of the suit in equity. The maxim

must not be interpreted and applied too broadly as, e.g., against a plaintiff who had not led a blameless life."

55. In *Worden v. California Fig Syrup Co.*, 187 U.S. 516-540, 47 L. Ed. 282, 23 Sup. Ct. 161, the U.S. Supreme Court has approved the aforementioned judgment in *Wood,* 108 U.S. 218, and held as under:-

> "Owner of trademark seeking to enjoin another from injuring him by false representation cannot ask aid of equity where he is guilty of fraud or misrepresentation in trademark which he seeks to protect."

56. In *Hall* v. *Cole*, 412 U.S. 1, 93 S.Ct. 1943, 35 L.Ed.2d 702 (1973), the United States Supreme Court has held that "Bad faith" or "unclean hands" is defined as an intent to mislead or deceive another, or neglect or refusal to fulfil some duty or contractual obligation not prompted by some honest mistake as to one's rights or duties, but by some interested or sinister motive.

57. Indian, English and American Courts have consistently taken the view that one who approaches the Court must come with clean hands. It is the bounden duty of the Court to keep the stream of justice absolutely clean. The Courts must not allow any one to abuse the court process. Any one who approaches must give full and fair disclosure of all the materials. In case the petitioner conceals anything that is known to be material, this is a fraud.

58. The Court will not allow a party to obtain any advantage from an *ex parte* order improperly obtained. The applicant must give information in the manner prescribed and must be perfectly frank and open with the Court.

59. This writ is discretionary. The applicant must forfeit his right to a writ if he has been guilty of misconduct. The application must be refused not only on the ground

of merits of the case but on the ground that *Rule Nisi* was obtained by concealment of facts, which ought not to have been concealed.

60. A Court will not be the abettor to inequity. Thus, one who seeks the aid of equity must come into Court with clean hands. The 'clean hands' doctrine is a rule of law that someone bringing a law suit asking the Court for equitable relief must be innocent of wrong doing or unfair practice. The Court should not lend its judicial power to support such inequitable conduct.

61. No person can be permitted to adopt dubious, dishonest and fraudulent means and make false averments or conceal the facts while submitting a writ petition. In such circumstances, the petitioner is not entitled to any relief from the Court.

62. The Court must refuse to grant relief to the parties who have approached the court in bad faith or misconduct irrespective of the merits of the case.

63. We have no hesitation in saying that the doors of justice would be closed for a litigant whose case is based on falsehood or suppression of material facts. Fraud and justice never dwell together. They are alien to each other. Fraud pollutes the sanctity, regularity, orderliness and solemnity of the judicial proceedings. It is the bounden duty of the Court to keep the stream of justice absolutely clean.

64. The court proceedings are really an inquiry in the search of truth. Fraud shakes the very foundation of the entire judicial process. Unless such obstructions are totally removed, the judicial system cannot remain clean and unpolluted. It is solemn duty and obligation of those involved in the administration of justice to ensure that the judicial process is not permitted to be abused in any manner.

65. When we scrutinise the facts of the present case on the principles of law crystallised by the judgments of

Indian, English and American Courts, the conclusion becomes obvious that this petition deserves to be dismissed with exemplary costs. The petitioner is clearly guilty of suppression of material facts, concealment and fraud. Ordinarily, we would have imposed exemplary costs to discourage such kind of litigation. But looking to the fact that the petitioner is a poor widow, by imposing exemplary costs, we do not want to add to her miseries. Consequently, this petition is dismissed, being devoid of any merit.

Per S.J. Vazifdar, J.

66. I have read the judgment of the learned Chief Justice. I agree that the petition ought to be dismissed. For myself, however, I am content to dismiss it on facts alone.

67. In addition to the facts on the basis whereof the learned Chief Justice has dismissed the petition, I would only like to add a few words of my own.

68. It is important to note that upon the death of her husband the Petitioner by her letter dated 10.7.1998 expressly stated: “therefore out of compulsion I am forced to do any available job for completing the eduction of my two minor children.” (emphasis supplied). The Petitioner thereby requested the Respondent to consider her application sympathetically and to give her a job. It is thus clear that the Petitioner's request to the Respondent was not for any particular post or job but for “any available job”.

69. Pursuant thereto, the appointment order dated 6.2.1999 was issued by the Respondent appointing the Petitioner on compassionate grounds on the vacant post of Class IV employee (Peon) in the school from 8.2.1999. The appointment on compassionate grounds had been consummated thereby as held by the Supreme Court in *State of Rajasthan v. Umrao Singh (1994) 6 Supreme Court Cases, 560* :

> "After having accepted the appointment as LDC, he sought appointment as Sub-Inspector. That was denied."

70. What was contended on behalf of the Petitioner however was that the acceptance by her of the appointment was not unconditional. The Petitioner's letter of appointment dated 6.2.1999 was sought to be relied upon in this regard. The Petitioner had endorsed at the foot of the letter that she was accepting the post offered, without prejudice to her right on the post of Clerk. The reliance on the above endorsement, and

the submission based thereon, is misconstrued and unfounded.

71. It is important to note that the Petitioner had during the life time of her husband itself, applied for appointment to the post of Junior Clerk in the second Respondents' school. This is admitted by her in her rejoinder dated 30.3.2005. Clearly, therefore, the endorsement pertained to her application in the normal course to the second Respondent for appointment as a Clerk. The endorsement did not contain a protest to the effect that the appointment on the basis of a compassionate appointment was faulty or irregular in any respect to wit, by the endorsement, the Petitioner did not even remotely suggest that the compassionate appointment ought to have been made in the post of a Clerk. The challenge to the validity of the appointment as a compassionate appointment therefore must fail.

72. In this view of the matter, the above judgment of the Supreme Court is clearly applicable to the facts of the case.

73. The present petition is a mere after-thought and is, therefore, liable to be dismissed.

S.J. VAZIFDAR, J.